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Washington, D.C. 20463

2004 MAY 20 P 1:59

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL: 03L-02

DATE ACTIVATED: September 24, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
December 29, 2004 – December 31, 2005¹

~~MUR 03L-02~~

DATE COMPLAINT FILED: September 8, 2003

DATE OF NOTIFICATION: September 15, 2003

DATE ACTIVATED: September 24, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
December 30, 2004

RR SOURCE

INTERNALLY GENERATED

MUR COMPLAINANT

Jay Hochberg

RESPONDENTS

Jim Treffinger for Senate, Inc. and
Robert A. Mathers, as Treasurer
Jay Hochberg (MUR)

RELEVANT STATUTES
AND REGULATIONS

2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
11 C.F.R. § 102.9(e)
11 C.F.R. § 103.3(b)
11 C.F.R. § 110.1(b)(1), (b)(3), (b)(5), (k)(3)
11 C.F.R. § 110.2(b)(3), (b)(5)
11 C.F.R. § 111.18(d)

INTERNAL REPORTS CHECKED

Disclosure Reports
Referral Materials

FEDERAL AGENCIES CHECKED

NONE

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I. INTRODUCTION

This report addresses the acceptance of excessive contributions by the Jim Treffinger for Senate, Inc. committee ("Committee") and Robert A. Mathers, as treasurer (collectively the "Respondents"). It includes a referral from the Reports Analysis Division ("RAD") and a complaint filed by one of the contributors who gave excessive contributions to the Committee during the period covered by the referral. According to the RAD referral, the Committee accepted excessive contributions totaling \$237,630.² Referral at 1; Referral Attachment 2 at 6. Most of these contributions, \$227,080, became excessive as a result of the Committee's failure to reattribute, redesignate, or refund contributions designated for the 2000 general election after Treffinger lost the 2000 primary election for the U.S. Senate in New Jersey. *Id.* The remaining amount consists of excessive 2000 primary election contributions. Referral at 1.

Jay Hochberg, the complainant, alleges that he gave the Committee contributions designated for the 2000 general election and contributions designated for the 2002 general election, both of which became excessive when Treffinger did not participate in the 2000 and 2002 general elections.³ Complaint. The Committee failed to reattribute, redesignate, or refund Hochberg's general election contributions. *Id.* Because the contribution of which Hochberg complains is included within the figure provided in the RAD referral, we recommend the two matters be merged.

² The amount in the referral, \$237,305, does not include one 2000 general election contribution the Committee refunded four months after Treffinger lost the primary election. See Referral Attachment 2 at 6.

³ When this Office acknowledged receipt of Hochberg's complaint, it notified him that he may have violated the Act. As discussed *infra* at 6-7, we recommend the Commission take no action with regard to Hochberg.

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1 In 2002 and 2003 the Commission and RAD informed Mathers and Treffinger of the
2 remaining excessive 2000 contributions, and Mathers failed to refund them. Contrary to advise
3 specifically provided to Treffinger in a footnote to a 2003 advisory opinion, the Committee has
4 since spent a significant portion of its cash on hand on Treffinger's legal fees. We believe this
5 provides a basis to proceed with reason to believe findings regarding Mathers in his personal
6 capacity, even though he was not treasurer at the time the contributions were received.

7 This Office recommends the Commission merge the two matters, find reason to believe
8 Jim Treffinger for Senate, Inc. and Robert A. Mathers, as treasurer, violated 2 U.S.C. § 441a(f),
9 find reason to believe Robert A. Mathers, in his personal capacity, violated 2 U.S.C. § 441a(f)
10 and 11 C.F.R. § 102.9(e), and enter into conciliation with the Respondents prior to a probable
11 cause finding. In addition, this Office recommends the Commission take no action against Jay
12 Hochberg.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. The RAD Referral**

15 **1. \$227,080 in 2000 general election contributions are excessive**
16 **contributions.**

17
18 The Committee accepted contributions for both the 2000 primary election and the 2000
19 general election after Treffinger filed his statement of candidacy for the 2000 primary election on
20 October 1, 1999. See Referral Attachment 2; James W. Treffinger Statement of Candidacy (Oct.
21 1, 1999). The Committee received \$227,080 in contributions designated for the 2000 general
22 election. See Referral at 1; *supra* note 1. On June 6, 2000, Treffinger lost the primary election
23 for U.S. Senate. Referral at 1.

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1 The Act provides that an individual or political committee may not make a contribution
2 to a candidate in excess of \$1,000 per election.⁴ 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R.
3 § 110.1(b)(1). Candidates and political committees are prohibited from knowingly accepting
4 contributions in excess of the limitations in section 441a. ~~See~~ 2 U.S.C. § 441a(f). The Act
5 allows the Committee to accept contributions for the general election prior to the primary
6 election, but the Committee must employ an acceptable accounting method to distinguish
7 between primary and general election contributions. 11 C.F.R. § 102.9(e); AO 1980-122, at 1-2.
8 While general election contributions may be used to make advance payments for general election
9 purposes, if the candidate does not win the primary election, the committee must have enough
10 cash on hand to refund all general election contributions, including those already used for such
11 payments. AO 1986-17 at 5. After Treffinger lost the 2000 primary election, the contributions
12 designated for the 2000 general election became excessive because Treffinger was no longer
13 eligible to be a candidate in that election. See 11 C.F.R. §§ 102.9(e)(3), 110.1(b); AO 1992-15 at
14 2-3; AO 1986-17 at 3-4.

15 When a committee accepts excessive contributions, the treasurer has sixty days from the
16 date of receipt to obtain reattribution of the contributions to another contributor in accordance
17 with 11 C.F.R. § 110.1(k)(3), to obtain redesignation of the contributions to another election in
18 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5), or to refund the contributions.
19 2 U.S.C. § 441a(f); 11 C.F.R. § 102.9(e); AO 1992-15 at 2; AO 1988-41 at 2; *see also* 11 C.F.R.
20 §§ 110.1(b)(3), 110.2(b)(3), 103.3(b)(3). For a redesignation to be valid, a committee must have
21 notified contributors that they have a right to a full refund or may choose to redesignate their

⁴ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by or subsequent to BCRA.

1 contributions; the contributor must affirmatively act to redesignate the contribution by providing
2 a written redesignation within the sixty-day period. See 11 C.F.R. § 110.1(b)(5)(ii)(A). Once
3 the general election contributions became excessive after Treffinger lost the primary, the
4 Committee had sixty days from the date of the primary, June 6, 2000, to reattribute, redesignate,
5 or refund the contributions. 11 C.F.R. § 102.9(e)(3); AO 1992-15 at 3.

6 Thirty-four days after the primary election, the Committee's treasurer contacted RAD
7 about the 2000 general election contributions it had already collected, seeking to apply them to
8 the 2002 primary election. Referral at 2. RAD informed the treasurer that any such
9 redesignation must occur within sixty days of the primary election. *Id.* Five days after this
10 conversation, the Committee sent RAD a letter describing its intent to obtain redesignations. *Id.*

11 Despite the Committee's assertion of its intent, there is no evidence that redesignation
12 occurred. To the contrary, there is evidence that it did not. Four pieces of evidence indicate that
13 a proper redesignation may not have taken place. First, the Committee notified the Commission
14 in 2002 that it had used \$50,000 of the \$227,080 to pay for 2000 primary election expenses.
15 Referral at 3. Since the Committee had already spent this money on 2000 primary election
16 expenses, it could not redesignate the \$50,000 for the 2002 primary election. Next, Hochberg's
17 allegation that he did not receive a refund of his 2000 general election contributions without
18 mention of an offer of redesignation or refund from the Committee, discussed *infra*, suggests the
19 Committee never notified him of his right to a refund or need to redesignate. See Complaint.

20 Third, the Committee gave nine contributors refunds of their 2000 general election contributions
21 months or years after the original sixty-day period for redesignation ended, so these refunds were
22 not in response to timely redesignation notices. Referral at 3, 4, 5; Referral Attachment 10;
23 Attachment 1 at 1. In addition, if the Committee had received permission to redesignate the

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1 contributions within the original sixty-day period, then the contributors could not receive a later
2 refund. *See* 11 C.F.R. § 110.1(b)(5). Finally, the Committee failed to amend its reports, as
3 required, to show that redesignation took place. *See* Referral.

4 **2. \$10,550 in 2000 primary election contributions were excessive when they**
5 **were received.**
6

7 The Committee also received \$10,550 in excessive 2000 primary election contributions,
8 originating from thirteen individuals who had already contributed \$1,000 for the 2000 primary
9 election. Referral at 1. There is no evidence that the Committee reattributed, redesignated, or
10 refunded the excessive contributions within sixty days of receipt as required by 11 C.F.R.

11 § 110.1(b)(5).

12 The Committee claims the excessive 2000 primary election contributions were actually
13 2000 general election contributions it had misreported as 2000 primary election contributions
14 due to a data entry problem. Referral at 2. However, the Committee failed to correct the
15 asserted reporting problem by filing an amended Schedule A. *Id.* Moreover, eight excessive
16 contributions from seven contributors totaling \$6,050 could not have been properly designated
17 for the 2000 general election because those seven contributors had already "maxed out" with
18 respect to that election. Referral Attachment 2; 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R.
19 § 110.1(b)(1). Moreover, there is no affirmative evidence that the Committee ever reattributed
20 or redesignated the remaining \$4,500. There is evidence that the Committee refunded one of the
21 remaining contributions, in the amount of \$1,000, two years after the 2000 primary election.

22 Referral at 5.

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1 **3. Conclusion**

2 This Office recommends the Commission find reason to believe Jim Treffinger for
3 Senate, Inc. and Robert A. Mathers, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly
4 accepting contributions exceeding the limits of 2 U.S.C. § 441a(a) totaling \$237,630.

5 **B. The Complaint – Hochberg gave excessive contributions in 2000.**

6 Hochberg is one of the many contributors who gave the Committee contributions
7 designated for the 2000 general election. According to reports filed with the Commission,
8 Hochberg contributed \$675 to the Committee for the 2000 general election.⁵ Referral
9 Attachment 2 at 12. None of this amount was reattributed, redistributed, or refunded within sixty
10 days of Treffinger's loss in the 2000 primary election. *Id.* Therefore, the \$675 became
11 excessive. *See* 11 C.F.R. §§ 102.9(e)(3), 110.1(b); AO 1992-15 at 2-3; AO 1986-17 at 3-4. If
12 the Committee had properly reattributed, redistributed, or refunded the excessive amount, the
13 contribution would not have been in violation of the Act. *See id.* This \$675 is included within
14 the total 2000 general election contributions discussed *supra*.

15 The Complaint also alleges that Hochberg gave excessive contributions designated for
16 the 2002 general election. On April 22, 2002, Treffinger withdrew from the 2002 primary
17 election, and the Committee was again in the position of needing to reattribute, redesignate, or
18 refund general election contributions. Despite the allegations in the Complaint, both the reports
19 filed with the Commission and the copies of checks attached to the Complaint show that
20 Hochberg gave one \$1,000 contribution for the 2002 primary election and none for the 2002
21 general election. Attachment 1 at 1; Complaint Attachment. The Complaint includes three

⁵ The 2000 general election contribution amount listed in the complaint, \$975, includes checks payable to Treffinger's state committee. *See* Complaint Attachment. The amount itemized in the referral is the total of Hochberg's contributions to the Committee.

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1 contribution checks made by Hochberg to Treffinger during the 2001-2002 cycle, but only the
2 one discussed above is payable to the Committee, while the other two are payable to "Election
3 Fund of James W. Treffinger," Treffinger's state committee.⁶ Complaint Attachment.

4 Due to the small size of the excessive contributions, this Office recommends the
5 Commission exercise its prosecutorial discretion and take no action against Hochberg.

6 **C. Communications with RAD, Recent Committee Activity, and Treasurer Liability**

7 The Committee's involvement with the 2000 general election contributions continued
8 into 2002 and 2003 with its new treasurer. Mathers became the Committee's treasurer in March
9 2002, and in that same month RAD contacted him to discuss the excessive 2000 general election
10 contributions. See Amended Statement of Organization (March 7, 2002); Referral at 4. After
11 their discussion, RAD faxed Mathers documentation of the excessive contributions. Referral at
12 4. In June 2002, Mathers met with RAD to discuss the steps he needed to take to deal with both
13 the 2000 and 2002 general election contributions since Treffinger had dropped out of the 2002
14 primary race in late April. *Id.*; Referral Attachment 7. RAD again gave Mathers documentation
15 of the outstanding 2000 general election contributions. *Id.* Despite properly refunding all of the
16 2002 general election contributions, Mathers did not resolve the problem with the 2000 general
17 election contributions. Referral at 4. The final communication between RAD and Mathers took
18 place in September 2002 when Mathers verified that he refunded a small portion of the excessive
19 2000 general election contributions during 2002. *Id.* at 5.

20 On July 25, 2003, the Commission issued Advisory Opinion 2003-17 to Treffinger
21 concerning the Committee's ability to pay his legal fees. In that Opinion, the Commission

22
⁶ The total 2002 contribution amount listed in the Complaint, \$1,325, includes the checks payable to "Election Fund of James W. Treffinger." See Complaint Attachment. The only check payable to the Committee is for \$1,000. *Id.*

1 concluded that Treffinger, who had pled guilty to two counts of a 20-count Federal criminal
2 indictment concerning actions he took as County Executive of Essex County, New Jersey, could
3 use the Committee's funds to pay for legal fees to defend against those portions of the charges
4 that arose directly from his campaign activity.⁷ AO 2003-17 at 6. However, the Commission
5 warned that "the Committee accepted contributions for the general election campaigns in 2000
6 and 2002," and "[t]o the extent that the Committee must still make refunds to its general election
7 contributors under 11 C.F.R. § 102.9(e)(3), any funds needed for this purpose must not be used
8 to pay the legal expenses permitted by this advisory opinion."⁸ *Id.* at n.6.

9 Beginning in August 2003, the Committee made six significant payments to law firms
10 that represented Treffinger in his May 2003 court appearance and October 2003 criminal
11 sentencing, presumably for legal expenses of the criminal case.⁹ Jim Treffinger for Senate, Inc.
12 October Quarterly Report (Oct. 21, 2003); Jim Treffinger for Senate, Inc. Year End Report (Feb.
13 2, 2004); Jim Treffinger for Senate, Inc. April Quarterly Report (April 20, 2004). Mathers was
14 the Committee's treasurer when the Commission issued its Advisory Opinion and at the time of
15 the payments.¹⁰

16

⁷ The Commission concluded that the Committee could pay for forty-five percent of Treffinger's legal fees.
AO 2003-17 at 6.

⁸ As of the date of the Advisory Opinion, the Committee had \$167,406.27 in cash on hand. *See* Jim Treffinger for Senate, Inc. July Quarterly Report (July 16, 2003); Jim Treffinger for Senate, Inc. October Quarterly Report (Oct. 21, 2003).

⁹ As of the filing of its 2004 April Quarterly Report, the Committee reported it has \$15,865.75 in cash on hand. Jim Treffinger for Senate, Inc. April Quarterly Report (April 20, 2004).

¹⁰ Although it was Treffinger's counsel who requested and received the Advisory Opinion on behalf of Treffinger regarding the Committee's funds, it was Mathers who, once the Advisory Opinion was issued, began authorizing payments.

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1 The Commission's regulation requires Mathers to refund the excessive 2000 general
2 election contributions. 11 C.F.R. § 102.9(e). Specifically, "[t]he treasurer of a political
3 committee . . . shall fulfill all recordkeeping duties as set forth" in section 102.9(e). *Id.*

4 If a candidate is not a candidate in the general election, any contributions made
5 for the general election shall be refunded to the contributors, redesignated in
6 accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance
7 with 11 CFR 110.1(k)(3), as appropriate.

8
9 11 C.F.R. § 102.9(e)(3). Thus, it is the treasurer's personal responsibility to take all actions
10 required by section 102.9(e)(3) if the candidate fails to qualify for the general election. The
11 Commission's Advisory Opinion explicitly directed attention to this regulation, but rather than
12 complying with it, Mathers authorized the payment of \$115,394.92 in legal expenses. Jim
13 Treffinger for Senate, Inc. October Quarterly Report (Oct. 21, 2003); Jim Treffinger for Senate,
14 Inc. Year End Report (Feb. 2, 2004); Jim Treffinger for Senate, Inc. April Quarterly Report
15 (April 20, 2004). Thus, Mathers violated 11 C.F.R. § 102.9(e).

16 Through his interaction with RAD, the warning in the Advisory Opinion, and the refund
17 requirement in the regulations, Mathers knowingly accepted the excessive 2000 contributions.
18 Mathers acted contrary to the Advisory Opinion, and despite knowledge of the illegal
19 contributions, he took no action to refund them. In fact, he used the illegal contributions to pay
20 for Treffinger's legal fees. *See* 11 C.F.R. § 103.3(b); MUR 4547 (Clinton/Gore '96)
21 (Commission found reason to believe that the recipient committee violated 2 U.S.C. § 441a(f)
22 and 441f when it learned of illegal contributions and failed to refund them under 11 C.F.R.
23 § 103.3(b)(2)). Thus, Mathers violated 2 U.S.C. § 441a(f) by accepting excessive 2000
24 contributions.

25 This Office recommends the Commission find reason to believe Robert A. Mathers
26 violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e).

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1 **III. DISCUSSION OF CONCILIATION**

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IV. RECOMMENDATIONS

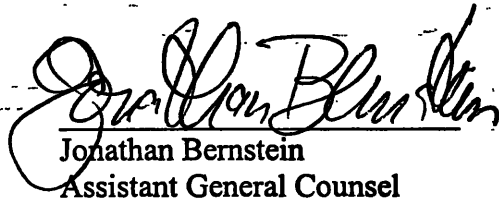
1. Open a MUR for RAD Referral 03L-02.
2. Merge the MUR created for RAD Referral 03L-02 into MUR 5388.
3. Find reason to believe that Jim Treffinger for Senate, Inc. and Robert A. Mathers, as treasurer, violated 2 U.S.C. § 441a(f).
4. Find reason to believe that Robert A. Mathers, in his personal capacity, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e).
5. Take no action and close the file with respect to Jay Hochberg.
- 6.
- 7.
- 8.
9. Approve the attached Factual and Legal Analyses.
10. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

5/20/2004

Date


Jonathan Bernstein
Assistant General Counsel


Renee D. Salzmann
Attorney

Attachments:

1. Contributor Report for Jay Hochberg
2. Factual and Legal Analyses

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Presented by the Federal Election Commission

Individual Contributions Arranged By Type, Giver, Then Recipient

Contributions to Political Committees

HOCHBERG, JAY
CALDWELL, NJ 07006

TREFFINGER, JAMES W
VIA JIM TREFFINGER FOR SENATE INC

10/23/2003	-325.00	<u>24020061796</u>
10/23/2003	-975.00	<u>24020061796</u>

HOCHBERG, JAY
CALDWELL, NJ 07006
COUNTY OF ESSEX

TREFFINGER, JAMES W
VIA JIM TREFFINGER FOR SENATE INC

12/26/2001	1000.00	<u>22020051899</u>
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HOCHBERG, JAY A MR.
PHILADELPHIA, PA 19103
STUDENT/LAW STUDENT

NADER, RALPH
VIA NADER 2000 PRIMARY COMMITTEE INC

06/27/2000	250.00	<u>20990169525</u>
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HOCHBERG, JAY MATTHEW
LIVINGSTON, NJ 07039
COUNTY OF ESSEX

TREFFINGER, JAMES W
VIA JIM TREFFINGER FOR SENATE INC

11/08/1999	500.00	<u>20020081190</u>
12/30/1999	300.00	<u>20020081190</u>
02/22/2000	200.00	<u>20020140815</u>
02/22/2000	300.00	<u>20020140814</u>
03/24/2000	300.00	<u>20020140815</u>